IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 880 OF 2005

Shaikh Chand Banemiya Shaikh ... Appellant

V/s

Manohar Baburao Shahane ... Respondent

Mr. A.P. Kulkarni for the appellant.

CORAM: P.V. KAKADE, J.

DATED: 19TH SEPT., 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Baramati dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Baramati, dated 31.1.2001 decreeing the suit for specific performance.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for specific performance of the contract on the basis of agreements

dated 14.6.1991 and 13.4.1992 and also for permanent injunction. The subject nmatter of the suit is the land bearing Survey No.241/a/6b/1 of which 3 Ares admeasuring 33 sq.mt. x 99 sq.mt. is the suit land. It was the case of the plaintiff that defendant was the owner of the suit land and since the defendant decided to sell the suit land, the plaintiff agreed to purchase it for Rs.1,05,000/- as per the market price. Accordingly, on 14.6.1991 an agreement of sale for Rs.1,05,000/- was taken place between the plaintiff and defendant. On the date of agreement of sale i.e. on 14.6.1991 the plaintiff paid Rs.35,000/- by way of earnest money to the defendant. As per the condition of the agreement, it was for the defendant go get N.A. the suit land. Thereafter, it was agreed that within a period of one year from the date of N.A. permission, the plaintiff will have to purchase the suit land from the defendant by paying the balance amount. The defendant did not bring the N.A. permission within a prescribed period. On the contrary, on 13.4.1992 defendant executed a supplimentary agreement of sale in favour of the plaintiff and by way of agreement dated 14.4.1992 it was agreed that upto June 1993 the defendant will bring N.A. permission and executed the registered sale deed of the suit land in favour of the plaintiff. It is alleged

that since the defendant was in need of money, on 9.6.1993 the plaintiff paid Rs.40,000/- to the defendant. Thus, the amount of Rs.75,000/- was paid to the defendant. Since the plaintiff had paid substantial amount of the suit transaction, the defendant has given possession of the suit land to the plaintiff which was by way of part performance. Thereafter, as the defendant did not execute the sale deed inspite of the notice dated 27.11.1995, the suit came to be filed.

The defendant contested the suit denying all the allegations made by the plaintiff and submitted that the suit deserves to be dismissed.

4. The learned Trial Judge, on the basis of available pleadings, adjudicated the dispute and came to the conclusion that the plaintiff had proved execution of agreements of sale on 14.6.1991 and 13.4.1992 in his favour and he had paid total consideration of Rs.75,000/- at the foot of the said agreements. It was further held that the plaintiff had proved his readiness and willingness to perform his part of the contract. It was further held that the defendant failed to establish his contention that the suit transaction was executed at the instance of the plaintiff under coercion and, as

such, the suit came to be decreed.

The appeal was carried to the Court of District Judge, Baramati. The learned Addl. District Judge, after hearing both parties came to the conclusion that the appeal deserves to be dismissed. Hence the present appeal.

5. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The concurrent findings are recorded by both the Courts below decreeing the suit for specific performance.

6. The learned counsel for the appellant submitted that the suit was barred by law of limitation which could be seen from the facts involved in the dispute. However, in this regard, it must be noted that, admittedly, there was no time limit stipulated in the suit agreement. As per the agreement Exh.32, the appellant had undertaken to convert the suit land for N.A. use and then to execute the sale deed in favour of the respondent. The respondent was to pay the balance of consideration of Rs.75,000/- and to get executed the sale deed within one year. In Exh.35 dated 13.4.1992 the appellant extended

the time for performance upto June, 1993 and the reason given was that the appellant was facing financial problem and the N.A. permission was not yet received. Under receipt Exh.30 dated 9.6.1993, the appellant obtained further amount of Rs.40,000/- from the respondent which aspect shows that he delivered the possession of the suit plot to the respondent at the said time. It appears that the time limit for performance remained till the end of June, 1993 as there was no mention of any time limit in Exh.30. The only mention was that balance consideration of Rs.30,000/- shall be paid to the appellant at the time of execution of the sale deed. The present suit is filed on 10.6.1996 and the limitation for the suit for specific performance being from the date fixed for performance and if no date is fixed, then since the refusal of performance by the defendant. In this case, agreed date of performance is 30.6.1993 and, therefore, it was within three years and within time.

The learned counsel for the appellant sought to put reliance on the ruling of the Apex Court in the case of **K.S. Vidyanadam and others v/s Vairavan, reported in (1997) 3 SCC 1.** The Apex Court has dealt with the scope of provision of Sections 20, 16(c) and 10 of the

Specific Relief Act, however, the facts involved therein are of no use to the present appellant in order to show that the suit is not within time. Similarly, the learned counsel for the appellant also sought to put reliance on the ruling of the Supreme Court in **Kanshi Ram v/s Om Prakash Jawal & ors., reported in AIR 1996 SC 2150,** wherein the Apex Court has observed that the grant of decree for specific performance is not automatic. Discretion is to be exercised on principles of justice, equity and good conscience. In my considered view, with regard to the ratio laid down by both the rulings of the Apex Court, those are not applicable to the present scenerio as involved in the factual matrix in this case. The evidence on record shows that not only the suit is within time, but it is also to be noted that ready and willingness on the part of the respondent is quite apparent from the record. In other words, both the Courts below have appreciated the entire evidence in proper perspective while coming to the conclusion that the plaintiff is entitled to decree of specific performance of the contract between the parties. It is needless to mention that the Apex Court has time and again observed that the concurrent findings of facts whatsoever erroneous cannot be disturbed in second appeal under Sec.100 of C.P.C. This is especially so,

when in a case wherefrom a given set of circumstances two inferences are possible, one drawn by the lower appellate Court is binding on the High Court in second appeal. Adopting any other approach is not permissible. This rule is definitely applicable to the present case while both the Courts below have come to the conclusion that the plaintiff’s suit deserves to be decreed.

7. Under the circumstances, I see no merits in the appeal and, therefore, appeal stands dismissed with no order as to costs.

Consequently, Civil Application No. 1410 of 2005 also stands dismissed with no order as to costs.

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